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No. 212

In the Supreme Court of the United States

OCTOBER TERM, 1958

ORVAL E. FAUBUS, GOVERNOR OF ARKANSAS, ET AL., PETITIONERS.

v.

UNITED STATES OF AMERICA, AMICUS CURIAE, AND JOHN AARON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES, AMICUS CURIAE, IN OPPOSITION

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OPINIONS BELOW

The findings of fact, conclusions of law, and order of the United States District Court for the Eastern District of Arkansas (R. 65–74) are reported as *Aaron* v. *Cooper*, 156 F. Supp. 220. The opinion of the United States Court of Appeals for the Eighth Circuit (Pet. App. 1a–21a) is reported at 254 F. 2d 797.

JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on April 28,

1958 (R. 102). The petition for a writ of certiorari was filed on July 24, 1958. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether both courts below correctly held that the particular facts of this case showed that there was undue delay in the filing of petitioner Faubus' affidavit of bias and prejudice against the district judge.

2. Whether, wholly apart from the question of undue delay, the affidavit of bias was correctly stricken because of legal insufficiency.

3. Whether the district court erred in refusing to dismiss the *amicus* petition of the United States.

STATUTE INVOLVED

28 U. S. C. 144 provides:

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.
>
> The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

STATEMENT

A brief summary of the prior proceedings in *Aaron v. Cooper* may be helpful to the Court. The action was brought originally on February 8, 1956, by certain Negro school children in Little Rock, Arkansas, to enjoin officials of the Little Rock School District from operating the public school system in a manner which allegedly discriminated against them because of race (143 F. Supp. 855 (E. D. Ark.)). In answering the complaint, the School District submitted to the court a gradual three-phase plan of school desegregation, which was scheduled to be put into effect in the fall of 1957, and which was designed to accomplish complete desegregation of the schools not later than 1963. The first phase of the plan, which was to begin in the fall of 1957, was to commence desegregation at the senior high school level. The second phase was to begin at the junior high school level, following successful desegregation of the senior high school level (estimated at two to three years). The third phase was to be at the elementary school level, following completion of the first two phases (R. 66).

On August 28, 1956, the district court, after a full hearing, concluded that the School District had acted in good faith, and that the Little Rock plan of gradual school desegregation was in accord with this Court's mandate in *Brown* v. *Board of Education*, 347 U. S. 483. The court thereupon denied the Negro school children's request for injunctive relief, but specifically retained jurisdiction of the case "for the entry of such other and further orders as may be necessary to obtain the effectuation of the plan" (143 F. Supp. at 866;

R. 68). In affirming the judgment of the district court, and in approving the Little Rock school plan as "in present compliance with the law", the Court of Appeals expressly noted that the district court was to retain jurisdiction to ensure compliance with the plan. *Aaron v. Cooper*, 243 F. 2d 361, 364 (C. A. 8).[1] No review of the judgment of affirmance was sought here.

Preparation for carrying out the plan: The district court's findings of fact (R. 65–72) are not disputed, and may be summarized as follows: As provided in the court-approved plan, desegregation was to commence in the fall of 1957 at the senior high school level. Approximately forty to fifty Negro students had applied for admission to Central High School. Their applications had been carefully studied by the responsible school authorities, and it was finally determined that thirteen of these students were particularly suited to make the adjustment involved in attending a school theretofore composed solely of white children. All steps necessary for the enrollment of these thirteen students in Central High School, including meetings with the students and their parents to prepare them for the necessary adjustment, were completed by the school authorities before the opening of the 1957 fall term. Four of the thirteen students chose not to transfer to Central High School. Thus, under the school plan for that term, there would

[1] The district court, on June 20, 1958, ordered the suspension of the plan until mid-semester of the 1960–61 semester. *Aaron v. Cooper*, Civil Action No. 3113 (E. D. Ark.), certiorari denied, June 30, 1958. The Court of Appeals for the Eighth Circuit reversed this order on August 18, 1958.

be but nine Negro students in a student body of approximately 2,000. Both the faculty and the student body were prepared to accept the nine Negro students (R. 68–69).

The placing of the Arkansas National Guard at Central High School: On September 2, 1957, petitioner Faubus, Governor of Arkansas, caused units of the Arkansas National Guard, under the command of petitioners Clinger and Johnson,[2] to be stationed at Central High School with orders "to place off limits to colored students those schools theretofore operated and recently set up for white students * * *" (R. 69).

Up to this time no crowds had gathered about the school, nor had there occurred any threats or acts of violence. The Mayor and Chief of Police at Little Rock had, however, out of an abundance of caution, conferred with the school authorities about taking appropriate steps by the police to prevent any possible disturbances or acts of violence. The Mayor, the Chief of Police, and the school authorities made no request to the Governor to assist in maintaining order at the school; and neither the Governor nor any State official consulted with the Little Rock authorities about whether the city police were prepared to cope with any incidents which might arise or whether there was any need of State assistance in maintaining order (R. 70).

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[2] General Clinger is Adjutant General of the Arkansas National Guard. Colonel Johnson is a Unit Commander of the Guard.

The fall term at Central High School began on September 3, 1957, but none of the nine eligible Negro students appeared at the school that day, having been advised not to do so since the National Guard was stationed at the school (R. 70). On that day, the district court, after a hearing on a rule to show cause issued against the school authorities, found that they had, as a consequence of the stationing of military guards at the school, requested the Negro students not to attend school. The court further found that there was no reason why the desegregation plan could not be carried out and, accordingly, directed the school authorities to integrate forthwith the senior high school grades, in accordance with the previously approved plan (R. 1–3, 71).

The next day, September 4, units of the Guard, acting pursuant to petitioner Faubus' order, forcibly prevented the nine Negro students from entering the school grounds. At that time a crowd of spectators congregated across the street from the school, but no acts of violence were committed or threatened. The evidence showed that the Guard could have maintained order at the school without preventing the attendance of the Negro students (R. 70–71).

The appearance of the United States as amicus curiae: That day, September 4, the district court wrote the United States Attorney at Little Rock that it was advised that its order directing the carrying out of the school district's integration plan "has not been complied with due to alleged interference with the Court's order" (R. 3–4). The United States Attorney was requested to make an investigation to de-

termine the responsibility for the interference, or the failure to comply with the order, and to report his findings to the court (R. 4). On September 9, after having received this report from the United States Attorney, the district court ordered the Attorney General and the United States Attorney to appear in the proceedings as *amici curiae* and to file a petition seeking injunctive relief against petitioners (R. 6).

In accordance with this order, the United States, as *amicus curiae*, acting through the Attorney General and the United States Attorney, filed a petition on September 10 against Governor Faubus, General Clinger and Colonel Johnson. The petition for injunctive relief alleged that, in using the Arkansas National Guard to prevent eligible Negro students from attending Central High School, the present petitioners had obstructed and interfered with the carrying out of the district court's previous orders of August 28, 1956, and September 3, 1957; and that, in order to protect and preserve the judicial process and to maintain the due and proper administration of justice, it was necessary that petitioners be made parties defendant, and enjoined from further interference with the court's orders (R. 6–9).

On the same day, the district court ordered that petitioners be made parties defendant and that they be served forthwith with a summons and a copy of the Government's petition and the court's order. The court set September 20 as the date for a hearing upon the Government's application for a preliminary injunction (R. 9–10).

The following day, September 11, the plaintiffs (the school children) moved the court for an order permitting them to file a supplemental complaint against petitioners, seeking the same relief as was sought in the Government's *amicus* petition (R. 10–11, 21–23).

The filing of the affidavit of bias and prejudice: On September 10, petitioners were notified that they had been made defendants (Pet. 14). On September 19, the day prior to the date set for hearing of the application by the Government for a preliminary injunction, petitioner Faubus filed an affidavit of bias and prejudice under 28 U. S. C. 144, *supra*, p. 2. This affidavit stated petitioner Faubus' belief, based upon certain occurrences which had taken place between September 3 and September 10, that District Judge Davies had a personal prejudice against him and a personal bias in favor of the plaintiff school children and the United States, *amicus curiae;* that he did not file the affidavit sooner because he was not made a defendant until September 10; that the affidavit was filed as soon as possible after petitioners were made defendants, and the facts of bias and prejudice became known to petitioner; and as soon as the affidavit could be considered by Judge Davies (R. 11–15).[3]

[3] The affidavit made the following allegations:

(1) That between September 3 and September 7 the press reported that representatives of the Department of Justice had conferred with Judge Davies, that the United States Attorney had received FBI reports on the investigation being made pursuant to Judge Davies' letter to the United States Attorney of September 4, and that Judge Davies had conferred with the Little Rock school superintendent, the United States Attorney,

On the next day, September 20, the United States, as *amicus curiae*, moved the district court to strike the affidavit of petitioner Faubus on the grounds that it was not timely filed and that it was legally insufficient (R. 15–16). At the same time, petitioners moved to dismiss the petition of the United States on jurisdictional grounds (R. 17–18), and for failure to convene a three-judge court under 28 U. S. C. 2284 (R. 19).

After hearing argument, the district court, on September 20, granted the Government's motion to strike the affidavit of bias and prejudice as not legally sufficient and not timely filed (R. 35), and granted the motion of the plaintiff school children for leave to file their supplemental complaint (R. 36). The court de-

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the United States Marshal, and the attorney for the Little Rock School Board (R. 12–13).

(2) That Judge Davies had received from the United States Attorney a report of the investigation conducted pursuant to the Judge's letter of September 4; that the report contained hearsay statements indicating that petitioner Faubus had acted in bad faith, and that on the basis of this report Judge Davies "has formed an opinion on the merits of this controversy and has prejudged the issues to be tried herein" (R. 13).

(3) That in connection with Judge Davis' order of September 7, denying the school authorities a stay of his order of September 3, Judge Davies had made reference to a statement, not in evidence, by the Mayor of Little Rock that there was no indication from sources available to him that there would be any violence in regard to the situation (R. 13–14).

(4) That Judge Davies, in ordering the Department of Justice to "intervene" in the action and to file the *amicus* petition against petitioner Faubus, on the basis of information given him by persons not parties to the litigation, "has departed from the role of impartial arbiter of judicial questions presented to him and has, in fact, assumed the role of an advocate favoring adverse parties to this affiant" (R. 14).

nied petitioners' motions to dismiss the petition of the United States (R. 58, 60).

As soon as the court ruled upon these motions, and prior to the introduction of any testimony in support of the applications of the United States, as *amicus curiae*, and of the plaintiff school children for a preliminary injunction, counsel for petitioners stated that he was standing on his motions and thereupon withdrew from the hearing (R. 60–61). At the close of the testimony presented by the Government in support of its application for a preliminary injunction, counsel for the plaintiff school children adopted all of that testimony as testimony on their behalf (R. 61).

At the conclusion of the hearing, the district court found that the school board's plan of integration, approved by the district court and the Court of Appeals, "has been thwarted by the Governor of Arkansas by the use of National Guard troops" and that "there would have been no violence in carrying out the plan of integration and that there has been no violence." The court then granted the application of the United States, as *amicus curiae*, for a preliminary injunction against petitioners (R. 62).

The injunction order, reciting in detail the events which culminated in its issuance, permanently restrains petitioners (a) from obstructing or preventing, by means of the Arkansas National Guard or otherwise, eligible Negro students from attending Central High School, (b) from threatening or coercing the students not to attend that school, (c) from obstructing or interfering in any way with the carrying out and effectuation of the court's orders of Au-

gust 28, 1956, and September 3, 1957, or (d) from otherwise obstructing or interfering with the constitutional right of the Negro children to attend the school (R. 64).[4]

On April 28, 1958, the Court of Appeals unanimously affirmed the order granting the preliminary injunction.

ARGUMENT

Petitioners do not challenge on the merits the injunctive order presently outstanding against them. Rather, they place principal reliance here on the contention that both courts below erred in ruling that the affidavit of bias was, in fact, not timely filed. We show below that this contention, as well as the remaining arguments asserted by petitioners, are wholly without substance, and that the decisions of both courts below are correct in all respects and warrant no further review here.

1. Petitioners' contention (Pet. 12–22) that Governor Faubus' affidavit of bias and prejudice was improperly stricken by the district court is without merit. The applicable statute, 28 U. S. C. 144, *supra*, p. 2, provides in relevant part:

> Whenever a party to any proceeding in a district court makes and files a *timely and sufficient affidavit* that the judge before whom

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[4] The injunction also provides that it shall not be deemed to prevent petitioner Faubus, as Governor of Arkansas, "from taking any and all action he may deem necessary or desirable for the preservation of peace and order, by means of the Arkansas National Guard, or otherwise, which does not hinder or interfere with the right of eligible Negro students to attend the Little Rock Central High School" (R. 65).

the matter is pending has a *personal bias or prejudice* either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

The affidavit *shall state the facts and the reasons for the belief* that bias or prejudice exists, and *shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time* * * *. [Emphasis added.]

The district court struck the affidavit for two reasons: (1) that it was not timely filed, and (2) it was not legally sufficient (R. 16). The court was correct on both grounds.[5]

(a) The affidavit of bias and prejudice, although based upon events known to have occurred between September 3 and September 10 (R. 12–14), was not filed until September 19, 1957, nine days after the filing of the Government's application for a preliminary injunction, and one day prior to the date set for hearing thereon. The delay in filing the affidavit was particularly signficant, for Judge Davies was the only district judge then available in either District of Arkansas (Pet. App. 14a), and, if he had decided in favor of petitioner Faubus, there would have been insufficient time to communicate with the Chief Judge of the Eighth Circuit and for the Chief Judge to arrange to have another judge come to Little Rock to hear the ap-

[5] Agreeing with the district court that the affidavit was not timely filed, the Court of Appeals found it unnecessary to consider its legal sufficiency (Pet. App. 14a).

plication for injunction the next morning. A postponement of the hearing would have been inevitable in a situation where the utmost promptness was required. In circumstances less urgent than those here, it has been held that similar affidavits of bias and prejudice were untimely. See *Bommarito* v. *United States*, 61 F. 2d 355 (C. A. 8); *Bowles* v. *United States*, 50 F. 2d 848 (C. A. 4), certiorari denied, 284 U. S. 648; *Lipscomb* v. *United States*, 33 F. 2d 33 (C. A. 8); *Bishop* v. *United States*, 16 F. 2d 410 (C. A. 8); *Ross* v. *United States*, 16 F. 2d 712 (C. A. 8); *Chafin* v. *United States*, 5 F. 2d 592 (C. A. 4), certiorari denied, 269 U. S. 552.

Petitioners also argue (Pet. 14) that the affidavit was timely because it was filed within the twenty days provided by the rules for an answer to the petition. The short and dispositive answer to this contention is that, of course, an application for a preliminary injunction may be heard, as it was here, before expiration of the time to answer. Nor is the delay excused by the fact that petitioners chose to retain private counsel rather than to utilize the services of the Attorney General of Arkansas.[6] Certainly, petitioners cannot delay selecting counsel and use that delay as an excuse for not filing the affidavit of bias and prejudice as soon as the alleged facts on which

[6] Since petitioners contended that the Government's *amicus* petition amounted to a suit against the State of Arkansas (R. 17–18), there can be no doubt that the Arkansas Attorney General was authorized to represent them. See Arkansas Statutes, 1947 (1956 Replacement), 12-712.

it is based come to their attention. Cf. *Hibdon v. United States*, 213 F. 2d 869 (C. A. 6).

Equally untenable is petitioners' contention (Pet. 15) that, even if the affidavit had been filed promptly, it could not have been considered by Judge Davies because he was not then present in Little Rock. The record does not show the dates of Judge Davies' absence from Little Rock. Even it it be assumed, however, that he was away from Little Rock during most of the period between September 10 and 20, there is no reason to think that, if the affidavit had been promptly filed, it would not have been brought to his attention, either by telephone or by mail, in time for him to rule on it, and, if he had deemed it sufficient in law, to have made arrangements with the Chief Judge of the Eighth Circuit for the assignment of another judge to hear the matters set for September 20. But, by not filing the affidavit until September 19, petitioner Faubus made it impossible to make arrangements for the designation of another judge without a delay in the hearing. Clearly, in these circumstances, both courts below were correct in concluding that the affidavit was not timely filed.

(b) Moreover, the affidavit was correctly stricken because not a single allegation in it could reasonably justify an inference of personal bias by Judge Davies against Governor Faubus.

Paragraphs (1) through (4) of the affidavit allege, in substance, that Judge Davies had conferred with the United States Attorney and other representatives of the Department of Justice about the case (R. 12–13). This allegation can hardly constitute a legally

sufficient ground to support an affidavit of bias and prejudice. Indeed, identical allegations have been characterized as "frivolous" in *Craven* v. *United States,* 22 F. 2d 605, 607 (C. A. 1), certiorari denied, 276 U. S. 627, and *United States* v. *Gilbert,* 29 F. Supp. 507, 509 (S. D. Ohio). See *Scott* v. *Beams,* 122 F. 2d 777, 788 (C. A. 10), certiorari denied, 315 U. S. 809, where the court held that an affidavit of bias and prejudice asserting that the judge had discussed issues in the case with an Assistant United States Attorney, in the absence of opposing counsel, "was not a fact showing bias and prejudice." See, also, *United States* v. *Onan,* 190 F. 2d 1 (C. A. 8).

Paragraphs (2) and (5) of the affidavit also assert in substance that Judge Davies had received FBI reports from the United States Attorney containing hearsay statements, and that, on the basis of these reports, Judge Davies "has formed an opinion on the merits of this controversy and has prejudged the issues to be tried herein" (R. 12–13). The mere receipt of the FBI reports by the district court is, of course, no basis for inferring prejudice. The district court was entitled to know what the facts were with respect to alleged interference with its previous orders (see R. 3–4), and, in a matter going to the integrity of the judicial process, the court was clearly entitled to call upon the law officers of the Government for assistance. Cf. *Universal Oil Products Co.* v. *Root Refining Co.,* 328 U. S. 575, 581. The bare allegation that Judge Davies had prejudged the issues on the basis of the FBI reports is wholly insufficient under the statute. *Price* v. *Johnston,* 125 F. 2d

806, 812 (C. A. 9), certiorari denied, 316 U. S. 677. *In re Lisman*, 89 F. 2d 898 (C. A. 2); *Henry* v. *Speer*, 201 Fed. 869, 872 (C. A. 5).

Paragraph (6) of the affidavit states that the district court, in denying an application by the Little Rock school authorities for a stay of its order of September 3, referred to a statement not in evidence made by the Mayor of Little Rock (R. 13–14). Even if it be conceded *arguendo* that it was error for the court to refer to a statement outside the record, the allegation is still legally insufficient. Nothing in the statement referred to, or in the fact that it was cited by the district judge, supports an inference of personal prejudice against petitioner Faubus. In any event, a legal error by a judge would not be a basis for his disqualification. *Berger* v. *United States*, 255 U. S. 22, 31; *Palmer* v. *United States*, 249 F. 2d 8 (C. A. 10); *Littleton* v. *DeLashmutt*, 188 F. 2d 973, 975 (C. A. 4).

Finally, paragraph (7) of the affidavit alleges that the district court, on its own initiative, directed the Attorney General, as *amicus curiae*, to file an application for an injunction against petitioner Faubus to prevent interferences with the court's order (R. 14). In this regard, there can be no question that the court was acting well within its authority. See, *infra*, pp. 17–20.

It is clear, therefore, that each and every allegation in the affidavit was plainly insufficient as a matter of law and that, on this ground also, it was properly stricken by the district court.

2. Petitioners further contend here (Pet. 22–28), as they did in both courts below, that the district court lacked authority to permit the United States, as *amicus curiae,* to file an application bringing in petitioners as additional parties defendant, and seeking injunctive relief against them. This is purely academic, since, as the Court of Appeals properly noted (Pet. App. 15a–16a), the same relief which was sought by the Government's *amicus* petition was sought by the supplemental complaint of the plaintiff school children. Nevertheless, we show that the contention is wholly groundless.

Although it is true that ordinarily an *amicus curiae* appears in a case only to advise the court on the issues of law involved, there is no legal requirement that the role of an *amicus* be so limited. Particularly where, as here, a matter of public interest in the proper administration of justice was presented by petitioners' forcible obstruction to the carrying out of the district court's orders of August 28 and September 3, it was entirely proper for the district court to call upon the Government's law officers to assist it in resolving the issues involved, even though this required the filing of a petition seeking injunctive relief and the presentation of evidence in support of the petition.

In *Universal Oil Products Co.* v. *Root Refining Co.*, 328 U. S. 575, 581, involving a question of the subversion of the due administration of justice by fraud, this Court said: "After all, a federal court can always call on law officers of the United States to serve as *amici.*" On the remand of that case to the Court of Appeals, that court authorized the Attorney General to appear

in the case as *amicus curiae* and authorized a special assistant to the Attorney General to appear for the United States, as *amicus curiae*. The special assistant, with the approval of the court, filed a statement of facts (which was the equivalent of a pleading) and presented evidence before the Court of Appeals. *Root Refining Co.* v. *Universal Oil Products Co.*, 169 F. 2d 514, 519–521, 537 (C. A. 3), certiorari denied, 335 U. S. 912. In disposing of the objection of one of the parties that the court lacked jurisdiction to conduct such proceedings, the court said: "This argument completely ignores the inherent power of a court to inquire into the integrity of its own judgments. * * * The matter is not one of merely private concern subject to the action or inaction of the litigants, but is one of vast public importance, so that it becomes immaterial that the injured party may have been derelict in bringing the fault to the court's attention." (169 F. 2d at 521–522.)

Similarly, in *Securities and Exchange Commission* v. *United States Realty & Improvement Co.*, 310 U. S. 434, this Court held that where an issue of public interest was involved it was proper for the Securities and Exchange Commission, as an agency of the Government, to intervene in a case and seek affirmative relief by way of vacating a prior order made by the court.[7] Again, in *The Exchange*, 7 Cr. 116, 118–119, where another important public interest was involved,

[7] The participation of the Securities and Exchange Commission in that case is set forth in detail in the earlier opinion of the Court of Appeals, *In re United States Realty & Improvement Co.*, 108 F. 2d 794, 796 (C. A. 2).

the United States Attorney filed a "suggestion" that an attachment against a vessel be quashed and submitted evidence to justify such relief. See, also *A. B. Dick Co.* v. *Marr*, 197 F. 2d 498, 501–502 (C. A. 2), certiorari denied, 344 U. S. 878; *Kasper* v. *Brittain*, 245 F. 2d 97 (C. A. 6), certiorari denied, 355 U. S. 834; *Helmbright* v. *John A. Gebelein, Inc.*, 19 F. Supp. 621, 623 (D. Md.).

Moreover, the statutes prescribing the authority of the Attorney General authorized him to appear in this case and present the paramount interest of the Government in contesting petitioners' forcible obstruction of the court's orders. Congress, in 5 U. S. C. 309, has authorized the Attorney General, "whenever he deems it for the interest of the United States," to conduct and argue, either in person or through any officer of the Department of Justice, "any case in any court of the United States in which the United States is interested * * *." Similarly, 5 U. S. C. 316 provides that the Attorney General may send any officer of the Department of Justice "to attend to the interests of the United States" in any suit pending in any of the courts of the United States.

The authority given the Attorney General by these statutes is obviously not limited to cases in which the United States is a formal party. As stated in *Booth* v. *Fletcher*, 101 F. 2d 676, 681–682 (C. A. D. C.), certiorari denied, 307 U. S. 628:

> * * * [5 U. S. C. 309] does not limit his [the Attorney General's] participation or the participation of his representatives to cases in which the United States is a party; it does not

> direct how he shall participate in such cases; it gives him broad, general powers intended to safeguard the interests of the United States in any case, and in any court of the United States, whenever in his opinion those interests may be jeopardized. * * *

These provisions "grant the Attorney General broad powers to institute and maintain court proceedings in order to safeguard national interests." *United States* v. *California*, 332 U. S. 19, 27. See, also, *Sanitary District* v. *United States*, 266 U. S. 405, 425–426; *Kern River Company* v. *United States*, 257 U. S. 147, 154–155; *New York* v. *New Jersey*, 256 U. S. 296, 303–304, 307–308.

In addition, the district court had authority to entertain the Government's *amicus* petition for an injunction against petitioners to prevent their forcible obstruction of the court's decrees as an exercise of the district court's ancillary jurisdiction to effectuate its orders and prevent their frustration. 28 U. S. C. 1651; *Steelman* v. *All Continent Co.*, 301 U. S. 278, 288–289; *Dugas* v. *American Surety Co.*, 300 U. S. 414, 428; *Local Loan Co* v. *Hunt*, 292 U. S. 234, 239; *Julian* v. *Central Trust Company*, 193 U. S. 93, 112.

Petitioners suggest (Pet. 25) that the United States had no interest in this case because the "action was one for the protection of private rights," *i. e.*, of the plaintiff school children. But this suggestion completely ignores the vital interest the Federal Government has in seeing that the due performance by the federal courts of their constitutional function under Art. III is not obstructed by force.

Finally, petitioners assert (Pet. 22–23) that the Government's *amicus* petition was unnecessary to uphold the district court's authority because there was an adequate remedy by way of contempt proceedings. But even if petitioners could have been proceeded against for contempt, surely that was not an exclusive remedy and the court had authority to invoke the remedy utilized here.

Accordingly, the district court had jurisdiction to enjoin petitioners from forcibly obstructing the court's order. Whether the district court had undertaken to do this on its own motion, or chose (as it did) to call upon the law officers of the Government for assistance, and whether the Government's pleading for that purpose had been by way of an *amicus* petition (as it was), or by formal intervention in the case, or by filing an independent action against petitioners, is wholly immaterial. The injunction was proper, and petitioners were not prejudiced by the choice of one particular style of pleading rather than another. See *United States* v. *United Mine Workers of America*, 330 U. S. 258, 295–301; *Kasper* v. *Brittain*, 245 F. 2d 97 (C. A. 6), certiorari denied, 355 U. S. 834.[8]

[8] Petitioners also contend that the lower court erred in proceeding to trial on plaintiffs' Supplemental Complaint which was filed without notice to petitioners (Pet. 28–29). But, in the first place, no specific objection to lack of notice was made, either in the district court, when the plaintiffs moved to file the Supplemental Complaint (see R. 35–36), or in the court of appeals. Secondly, there could be no possible prejudice, since the Supplemental Complaint was, in substance, a repetition of the matters contained in the Government's *amicus* petition, of which petitioners had due notice.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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